

**BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

IN THE MATTER OF	§	
REQUEST TO UPDATE DEFAULT	§	
COMPENSATION RATE FOR DIAL-	§	
AROUND CALLS FROM PAYPHONES	§	RM NO. 10568
AND PETITION FOR RULEMAKING	§	
TO ESTABLISH REVISED PER-CALL	§	
PAYPHONE COMPENSATION RATE		

**RESPONSE OF THE OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF
TEXAS**

NOW COMES THE STATE OF TEXAS (State), by and through the Office of The Attorney General of Texas, Consumer Protection Division and files this its response to the petitions for rulemaking of the American Public Communications Council (“APCC”) and the RBOC Payphone Coalition (“RBOC”). These comments are timely filed pursuant to the Commission’s subsequent order in DA-02-2381.

The Office of the Attorney General submits these comments as the representative of state agencies and state universities as consumers of telecommunications services in the State of Texas.

We respond to these petitions with three major concerns. First, the Commission has just acted on similar concerns raised about the per call compensation rate in its *Fifth Order on Reconsideration and Order on Remand* in CC Docket No.96-128 and there is at present no compelling reason to revisit these issues. Second, there is at least some empirical evidence that the demand for and profitability of payphone services has been stable or has perhaps increased so that an increase in per call compensation is not justifiable and third, the data supplied by the petitioners

regarding a drop in call volumes per payphone is to a great degree self-selected and does not represent a true random sampling of pay phones in the marketplace.

Our initial concern is that the Commission, on October 23rd, 2002, has released the aforementioned *Fifth Order on Reconsideration and Order on Remand*, dealing, in part, with some of the very issues raised by the petitioners. In that Order, in ¶s 26-29, the Commission has expressly denied a motion for reconsideration of the 24 cent rate. Having just decided this issue, we do not believe it a judicious use of the Commission's resources to immediately revisit it, absent some compelling new information, which we do not believe is found in the petitions. Although we are virtually certain that the petitioners would take the position that the drop in call volumes is a significant new issue, it must be stated that this issue was also addressed in the *Fifth Order on Reconsideration* and that the Commission, in ¶s 16-22, declined to change its methodology or its actual calculation of average compensable calls per phone, or to adopt a factor for declining call volumes, as had been requested by WorldCom. Given the amount of time and energy recently devoted to this issue by the Commission, we simply do not believe it is timely to once again reconsider these issues.

Our second area of concern is that there appears to be conflicting empirical evidence as to the extent to which payphone profitability is at risk. A recent example in Texas is reflected in an article in the May 7, 2001 New York Times, in which the owner of a payphone company is quoted as saying: "This whole idea that cell phone technology has killed the pay phone business is really not the case." The article, included as an exhibit to our comments, goes on to state that the number of payphones had actually held constant from 1997 to 2001, and that the business appeared to be profitable. It appears that, at a minimum, further inquiry is needed into the assumption that call

volume has declined significantly, or that this industry is in trouble due to insufficient per call compensation.

Finally, we take issue with the methodology used by the petitioners to support their claims.

The “marginal” pay phones used in the APCC petition were self-selected as responses to a survey. Survey responses are well-known to be biased and obviously are not based on an objective source of information. Those payphone providers who are less successful and therefore have a greater interest in increasing their per call compensation will be more motivated to respond to the survey.

Those with above average returns on their investment likewise have an incentive not to respond if they believe that doing so could ultimately harm their economic interests. The RBOC petition raises similar concerns with its self-reported call count from Coalition members only. As it is the Coalition petitioning for the rulemaking, there is obvious self-interest in the reporting, as well as a lack of information from non-members. Should the Commission choose to investigate the claims of lost call volume further, it is important that some type of independent statistical sampling of call volumes be conducted.

We are also concerned that, although the petitioners are requesting an increase of over 100% in the per call compensation rate, (from 24 cents to 49 cents for the RBOC Coalition and from 24 cents to 48 cents for APCC), their own analysis of overall lost call volume is a range of 10.5% (APCC Petition at page 8) to 20% (RBOC Petition at page 40). Were it proven to be true, doubling the rate would seem to be an overreaction to this amount of lost volume. Also, it does not make sense to double the compensation per call for all of the remaining pay phones, particularly considering that common sense tells us that the call volumes should be increasing at at least some of them if there are fewer pay phones available. As APCC states at page 4 of its Petition, “(w)hen

the call volume falls to 350 calls and the payphone is removed, the need for those 350 calls does not disappear.” This is absolutely correct, because when the pay phone disappears, those customers without cellular phones or local service will simply find another pay phone if they must make a call, thereby increasing the call volumes at the remaining phones.

For all of the above reasons, we therefore request that the petitions for rulemaking be denied in their entirety.

The Office of the Attorney General of Texas appreciates this opportunity to provide a response to these petitions for rulemaking.

Respectfully submitted,

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Date: October 30, 2002